

HON. MARGARET CHAN

PART 49 – PRACTICES AND PROCEDURES

last updated November 2023

**Supreme Court of the State of New York
Commercial Division
60 Centre Street, Courtroom 252
New York, NY 10007**

**Part Clerk/Courtroom Phone: 646-386-4033
Chambers Phone: 646-386-5695**

Law Clerks: Victor J. Pinedo, Esq. (vjpinedo@nycourts.gov)
Michael S. Chu, Esq. (mschu@nycourts.gov)
Yuyao Leng, Esq. (yleng@nycourts.gov)

Courtroom Part Clerk: John Howard (johoward@nycourts.gov)

Chambers Email Address: SFC-Part49-Clerk@nycourts.gov

Preliminary, Compliance, and Status Conferences generally are held on Wednesdays beginning at 9:30 a.m. Pre-trial Conferences and oral argument on motions will be held on Tuesdays beginning at 10:00 a.m. or as otherwise directed.

I. GENERAL

- A. The Rules of the Commercial Division, 22 NYCRR 202.70,¹ are incorporated herein by reference, subject to minor modifications described below.
- B. These rules also largely apply to the non-Commercial Division cases that Justice Chan retained from her former IAS Part 33.²
- C. Neither Justice Chan nor her law clerks will engage in ex parte communications. Attorneys or litigants for all parties to the action must be present, whether in person, telephonically or by video conference.
- D. Justice Chan's law clerks accept telephone calls between 2:30 p.m. and 4:30 p.m. Communications at other times should be directed to Part Clerk John Howard at SFC-Part49-Clerk@nycourts.gov.
- E. Voicemail or email to Chambers or the Part are not a substitute for

¹ The rules are available at: <http://ww2.nycourts.gov/rules/trialcourts/202.shtml#70>.

² Pursuant to the Administrative Order of the Chief Administrative Judge of the Courts AO/270/20, select Commercial Division Rules now apply to General IAS Supreme Court parts. Attorneys practicing before the legacy Part 33 are advised to familiarize themselves with the rules, available at: <https://www.nycourts.gov/LegacyPDFS/rules/comments/orders/AO%20Commercial%20Division%20rules%20in%20civil%20courts.pdf>

seeking relief through filings on NYSCEF. Voicemails and emails should generally be limited to scheduling and logistical matters and should be directed to Part Clerk John Howard at SFC-Part49-Clerk@nycourts.gov. Parties and counsel should not assume that voicemails and emails have been heard or read unless they have received a response. All email communications to Chambers, including administrative matters and transmittals of documents, must copy all counsel. For counsels' letter-requests that require a time-sensitive response from the court, counsels should upload the letter requests onto NYCSEF and notify the court of the time-sensitive request by email to one of Justice Chan's Law Clerks, copying all counsel.

- F. All adjournments (motions, conferences, trials) require prior Court approval; ex parte applications for adjournments will not be considered. Applications for adjournments must be made at least 48 hours in advance of a scheduled appearance, except in cases of emergency.
- G. Counsel shall timely notify the Court as soon as practicable, by email to SFC-Part49-Clerk@nycourts.gov, of the settlement or imminent resolution of active cases or pending motions and provide the Court with a stipulation of settlement as soon as practicable. The parties need not reveal the terms of a settlement but must notify the court that a resolution has been reached and that both sides have agreed to discontinue the case. In addition to notifying the court of a settlement or discontinuance, counsel shall withdraw any pending motions and any pending appeals.
- H. When only Westlaw or Lexis citations are available, the Court has a preference that Westlaw citations be used when possible.
- I. Parties are encouraged to submit documents in Times New Roman or Century fonts, 12-point font size and in double-spaced line format. Parties are discouraged from submitting documents in Courier font.
- J. When a transcript of a conference, hearing, or trial is required, the parties shall obtain a copy of the transcript and upload it onto NYSCEF.

II. SUBMISSION OF DOCUMENTS

- A. Part 49 is an e-filing Part. Justice Chan generally does not accept working / courtesy copies of documents.

III. CONFERENCES

- A. Preliminary Conferences. Parties must use this Part's standard form Preliminary Conference Order. Copies are available on the Commercial Division website (<http://ww2.nycourts.gov/rules/trialcourts/202.shtml#70>).

Parties must meet and confer and fill out a Preliminary Conference Order in advance of the Conference and be prepared to address the topics listed in Commercial Division Rule 8.

- B. Compliance Conferences. At least seven days prior to the compliance conference, counsel shall jointly submit a completed Part 49 discovery conference form available on the Commercial Division website (<http://www.nycourts.gov/comdiv/ny/newyork.shtml>) setting forth the status of discovery, describing any significant disputes to be addressed at the conference, any non-compliance with prior order and the date of the order, proposed revisions to a discovery schedule, whether any motions or appeals are outstanding, and whether the parties have attempted Alternative Dispute Resolution or other efforts at settlement. For more information regarding the ADR program, please visit: http://www.nycourts.gov/courts/comdiv/ny/ADR_overview.shtml.
- C. Status Conferences. At least seven days prior to the status conference, counsel are encouraged to jointly submit a completed Part 49 discovery conference form available on the Commercial Division website (<http://www2.nycourts.gov/rules/trialcourts/202.shtml#70>) setting forth: a summary of the case; the current schedule for completion of discovery and filing; the Note of Issue date in the last order; any non-compliance with a prior order and date of such order; proposed revisions to the schedule and reasons therefor; whether there are any outstanding motions and/or appeals; and whether the parties have attempted Alternative Dispute Resolution or other efforts at settlement.
- D. Settlement Conferences. The parties may, on consent, request a settlement conference by emailing Chambers and by filing a letter on NYSCEF.

IV. CONFIDENTIALITY ORDERS AND SEALING

- A. Model Confidentiality Order. Any proposed order regarding the confidential exchange of information shall be based on the model Stipulation and Order for the Production and Exchange of Confidential Information posted under Justice Chan's rules. If the parties make any changes to this form order they shall e-file a redline indicating the changes.
- B. Sealing. Sealing, including redactions beyond those required by Redaction Rules (e.g., date of birth, Social Security number, and account numbers), is discouraged. Any request for additional redactions or sealing shall be made by Order to Show Cause and must establish "good cause" pursuant to the Uniform Rules for Trial Courts, 22 NYCRR 216.1. For documents sought to be sealed, counsel shall e-file both the unredacted (with the designation "Request to Seal") and redacted documents. Additional instructions are available from the E-filing Clerk's Office.

V. MOTION PRACTICE

- A. Limited Use of Orders to Show Cause. Motions shall be brought on by order to show cause only when there is genuine urgency (e.g., applications for provisional relief, a stay is required, a statute mandates to so proceed, or by leave of Court) (Commercial Division Rule 19). Absent advance permission, reply papers shall not be submitted on orders to show cause.
- B. Pre-Motion Letters. Except for discovery motions (Section VI below), no prior permission or letters pursuant to Commercial Division Rule 24 are required before making a motion. If the parties believe that the dispute may be resolved quickly without the need for formal motion practice, they may request a pre-motion conference.
- C. Memoranda of Law. All motion papers (in support, opposition, and reply), whether by notice of motion or order to show case, must include a Memorandum of Law, subject to the word limits set forth in Commercial Division Rule 17. Therefore, Affidavits or Affirmations of counsel should not contain legal arguments. Parties are encouraged to include hyperlinks to cited court decisions, statutes, rules, regulations, treatises, and other legal authorities and shall follow Commercial Division Rule 6 with respect to hyperlinking.
- D. Combined Briefs. Similarly situated parties (e.g., multiple defendants moving to dismiss on overlapping grounds) should make reasonable efforts to consolidate their briefing papers to avoid duplication. The Court will consider requests to enlarge applicable word limitations to facilitate the filing of combined briefs.
- E. Motions for Summary Judgment. Commercial Division Rule 19-a statements are required. The responsive statement submitted by the non-moving party should include the text of the moving party's statement to which each paragraph-specific response is addressed. The Rule 19-a statement is not a substitute for including a Statement of Facts (with citations to the record) in the Memorandum of Law.
- F. Pleadings. Pleadings that are required in support of a motion (the complaint, answer, answer with counterclaims) shall be uploaded in that motion.
- G. Motion Sequence Number. All papers must have the Motion Sequence Number in bold on the front page of all papers related to any motion or cross motion.
- H. Oral Argument. Requests for oral argument may be included in the Notice of Motion or in the Opposition papers. If the Court concludes that oral argument is not necessary, a written decision will be issued on the submitted papers.

- I. Exhibits. Exhibits to motions shall be uploaded to NYSCEF individually, with each Exhibit clearly labeled with its respective identifying information.
- J. Use NYSCEF Numbers. Do not cite to affidavits or affirmations and citing to exhibit numbers or letters is not helpful; use NYSCEF Numbers with pin-point citations and, where possible, hyperlinks to the NYSCEF document.
- K. Transcripts. Following all hearings on motions, when required, the parties must obtain a copy of the transcript and upload it onto NYSCEF. A motion is not considered fully submitted until the transcript is uploaded on NYSCEF.
- L. Participation. The Court supports the professional development of junior attorneys and encourages their participation in trials and oral arguments on motions. The Court also strongly encourages substantive participation in court proceedings by women and diverse lawyers who historically have been underrepresented in the commercial bar.
- M. Pro Hac Vice Applications. Pro hac vice motions must include a proposed order and an affidavit in support from a member of the Bar of the State of New York and an affidavit of the applicant (attaching a recent certificate of good standing from the applicant). The affidavit of the applicant must advise the Court as to whether the applicant has ever been or is presently subject to a disciplinary proceeding. If there is no opposition to the motion, the movant should include a stipulation indicating as much. A model Part 49 Pro Hac Vice Proposed Order Form is available at <https://www.nycourts.gov/courts/comdiv/ny/newyork.shtml> in the section dedicated to Justice Chan's Part 49 materials.

VI. DISCOVERY

- A. The Court expects parties and counsel to proceed cooperatively and professionally during discovery, with an emphasis on efficiency, practicality, and proportionality.
- B. Discovery motions are discouraged. If a dispute cannot be resolved after good faith efforts to meet and confer, the parties should proceed in accordance with Commercial Division Rule 14. Counsel seeking or objecting to discovery shall fill out the Part 49 discovery form available on the Commercial Division website (<http://www2.nycourts.gov/rules/trialcourts/202.shtml#70>) and email it to the Court at SFC-Part49-Clerk@nycourts.gov and upload it to NYSCEF. After the form is e-filed, and counsel have made a good faith effort to consult one another and to resolve the dispute, counsel for the affected opposing party or non-party shall email a responsive letter not exceeding 3 pages, single spaced, to SFC-Part49-Clerk@nycourts.gov and upload it to

NYSCEF. The parties shall coordinate to make a single Rule 14 submission to the Court containing both the initial Part 49 discovery form and any responsive letter.

VII. TRIAL RULES

- A. Pre-Trial Submissions. The submissions required under Commercial Division Rules 26, 27, 28, 29, 31(a), 31(b), and 32, plus marked pleadings and a Joint Statement of Stipulated Facts and Procedural History, shall be made at least fourteen days prior to the final Pre-Trial Conference.
- B. Additional Pre-Trial Submissions in Jury Trials. In addition to the above, for jury trials the following materials shall be submitted at least fourteen days prior to the final Pre-Trial Conference:
- i. A short summary (a few sentences) of each party's claims to be used by the Court as part of the preliminary instructions to the jury; and
 - ii. Proposed jury instructions, including the text of relevant PJI instructions, should be submitted by email to Chambers (SFC-Part49-Clerk@nycourts.gov) in Word format. The submissions should note the instructions to which the parties have stipulated. Any proposed deviations from PJI instructions should be highlighted and explained, with citations to legal authority where appropriate. Counsel may update proposed jury instructions during the course of the trial.
- C. Exhibits.
- i. On or before the first day of trial, counsel shall provide the Court with a flash drive containing copies of their proposed exhibits, as well as any binders of documents that will be shown to witnesses.
 - ii. After trial, counsel shall e-file a list of the exhibits that were admitted into evidence. Counsel shall provide the Court with a flash drive containing copies of the admitted exhibits, identified by exhibit number.
 - iii. Flash drives should be marked with the short caption and index number of the case.
 - iv. Exhibits must be pre-marked in accordance with Commercial Division Rule 28.
- D. Transcripts. For multi-day trials, the Court requires that the parties order a daily copy of the transcript for the duration of the trial. Counsel shall e-file the transcripts after trial for any post-trial motions.